

In the Matter of License No. 173036 and all other seaman Documents
Issued to: GEORGE B. SAUNDERS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

995

GEORGE B. SAUNDERS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 1 April 1957, an Examiner of the United States Coast Guard at Boston, Massachusetts suspended Appellant's seaman documents upon finding him guilty of negligence. The specification alleges that while serving as Pilot on board the American SS READING under authority of the document above described, on or about 18 February 1957, Appellant failed to prevent said vessel from grounding on Henrietta Rock, Buzzards Bay, in the approaches to New Bedford, Massachusetts, despite the availability of visible aids to fix the position of the vessel.

At the beginning of the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by counsel of his own choice and he entered a plea of not guilty to the charge and specification.

The Investigating Officer made his opening statement. As a result of prior stipulation with Appellant's counsel, the Investigating Officer introduced in evidence, without objection, documentary exhibits including brief statements by the Master of the ship and three members of the crew.

In defense, Appellant offered in evidence his sworn testimony. Appellant admitted that he knew Henrietta Rock Buoy did not necessarily mark all the shallow area and that this buoy should be given a wide berth to starboard; but that he did not think about this factor while concentrating on keeping this red buoy to starboard and getting on the range course.

At the conclusion of the hearing, the oral arguments of the Investigating Officer and Appellant's counsel were heard and both parties were given an opportunity to submit proposed findings and conclusions. The Examiner then announced the decision in which he concluded that the charge and specification had been proved. An

order was entered suspending all documents, issued to Appellant, for a period of six months.

The decision was served on 3 April 1957. Appeal was timely filed on 29 April 1957.

FINDINGS OF FACT

On 18 February 1957, Appellant was serving as Pilot on board the American SS READING and acting under authority of his License No. 173036 when the ship ran aground near Henrietta Rock Buoy No. 6, Buzzards Bay while approaching New Bedford, Massachusetts. The grounding was at a point approximately one-half mile below the beginning of the dredged channel. The main channel range course to New Bedford is 335 degrees true.

The READING is a steam-type collier of 6,753 gross tons and 441 feet in length. She was operating under enrollment carrying a cargo of 9,929 tons of coal from Norfolk to New Bedford with a draft of 27 feet, 10 inches forward and 28 feet, 6 inches aft. Appellant boarded the vessel on 17 February and she anchored overnight off New Bedford in order to await high water on the following morning.

Prior to departure from the anchorage on 18 February, Appellant and the Master looked at C. & G.S. Chart No. 252, corrected to 31 May 1948, and discussed a 27-foot spot indicated on the chart just inside the entrance to the dredged channel. Appellant assured the Master that this spot had been dredged. There was no discussion about the 19-foot area, to the west of Henrietta Rock Buoy No. 6, where the ship ran aground. But Appellant knew about the latter shallow area and the position of the buoy with respect to it. (The later C. & G.S. Chart No. 252, which was not on board but was submitted in evidence, does not show the 27-foot spot. The location of Henrietta Rock Buoy and other material markings do not differ on the two charts.)

The READING got underway at 0836 with Appellant at the conn and proceeded toward the harbor. The weather was clear with excellent visibility, there was a westerly wind of force 5 to 6 (17-27 M.P.H.), the sea was moderately rough and the tide was flooding. The combination of the wind and tide set the ship to the eastward as she headed to the north. Also in the pilothouse were the helmsman and Third Mate. The Master was on and off the bridge but he was there continuously for five minutes before the casualty. The chart No. 252 in use remained in the chartroom aft of the pilothouse while the ship was underway. Appellant did not leave the pilothouse. The Third Mate occasionally looked at the chart but volunteered no information to Appellant and he asked for none. The record does not disclose that any bearings were plotted while

making this approach.

At 0849, the ship was close abeam of bell buoy "BB" which is almost in line with the main channel range course of 335 degrees true and between 4 and 5 miles from the entrance to the dredged channel. The range is formed by Butler Flats Lighthouse and Palmer Island Lighthouse. The former is approximately 2.2 miles from where the grounding took place. Both of these aids to navigation were clearly visible to Appellant for some time prior to the stranding. The ship was making full speed ahead of 12 knots on course 350 degrees true when bell buoy "BB" was abeam to starboard at 0849.

Black can buoys No. 1 and 3A were in line with the main channel range. At 0855, can buoy No. 1 was passed abeam to port, speed was reduced to one-half ahead and course changed to 336 degrees true to leave the range slightly open to the left while passing a 28-foot shoal at can buoy No. 3A. After passing buoy No. 4 to starboard and shortly before passing buoy No. 3A to port, course was altered about 3 degrees to the right to pass a Coast Guard vessel and then changed to 330 degrees true at 0907. Appellant intended to bring the ship on the range although she had been set well to the eastward by the wind and tide. If the ship had followed the range course of 335 degrees true formed by the two lighthouses, she would have passed midway between Brooklyn Rock Lighted Bell Buoy to port and the channel edge of the 19-foot area which extends about 100 yards to the west of Henrietta Rock Buoy No. 6. The width of this passage is more than 400 yards and all depths are over 30 feet. Henrietta Rock Buoy is located between the 19-foot area and a rock covered by 11 feet of water immediately to the north and east of the buoy.

At 0912, Appellant ordered a change of course to 325 degrees true when about 500 yards from the point of the grounding. At 0915, the ship ran aground about 200 feet west of Henrietta Rock Buoy. The Master immediately ordered the engines stopped. Attempts to free the vessel were not successful. The ship was heading 322 degrees true and soundings indicated that she was on a pinnacle rock. The chart shows this as a 19-foot shoal area. Butler Flats Lighthouse was bearing 330 3/4 degrees true. The ship remained aground for 7 days. There were no injuries or deaths but considerable damage.

On 19 February, it was determined that all buoys in the vicinity of the casualty were on station.

Appellant has been going to sea for about 30 years. His prior record consists of a 10-day suspension in 1947 in connection with the grounding of a vessel on which he was serving as Master and a

probationary suspension in 1953 for a grounding while conning a vessel during a period of reduced visibility. Appellant was also the Master of the latter ship.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the 19-foot sounding indicated on the chart marks a pinnacle rock rather than a shoal as stated by the Examiner. This 19-foot spot constituted a trap for a deep draft vessel because this is the only shallow water on the channel side of any buoy marking the main channel. A pilot exercising reasonable care under the circumstances could easily overlook the location of this 19-foot area relative to Henrietta Rock Buoy No. 6 when he did not have the chart under observation after getting underway. In this case, the chart remained in the chartroom.

Appellant properly assumed that he could pass Henrietta Rock Buoy close aboard since this would comply with the only affirmative duty required by 14 U.S.C. 87: to pass red buoys on the starboard hand and black buoys to port when entering a harbor. Also, Appellant was required to remain on the starboard side of the 400-yard wide channel passage between Henrietta Rock Buoy and Brooklyn Rock Buoy. Hence, the poor location of the former buoy should have been taken into consideration by the Examiner especially since it misled Appellant rather than constituting a visible aid to assist him in fixing the position of his vessel as alleged in the specification.

For these reasons, Appellant respectfully contends that the findings and conclusions of the Examiner should be reversed because the charge and specification are not proved.

Even if Appellant is found guilty, his conduct did not amount to "gross negligence" (as found by the Examiner) which connotes heedless and reckless action. Appellant's conduct falls far short of this. Moreover, "gross negligence" could not be proved, as a matter of law, when Appellant was charged with "negligence." Since the Examiner made the finding of "gross negligence" in the same paragraph with the order of suspension, this indicates that great weight was given to this erroneous finding. Therefore, it is respectfully submitted that the outright suspension of six months should be substantially reduced if the case is not dismissed.

APPEARANCES: Messrs. Ely, Bartlett, Thompson and Brown by John O. Parker, Esquire, of Counsel.

OPINION

Negligence is commonly defined as the failure to exercise the care which a reasonably careful and prudent person of the same station would exercise under the same circumstances. As applied to this particular case, I agree with Appellant's statement that the standard of care required was that of a reasonably prudent, federally licensed pilot for New Bedford Harbor. In other words, Appellant had a duty to take all reasonable precautions to avoid dangers to navigation while he was conning the READING as a pilot.

The next question presented is what constitutes reasonable care by a pilot licensed for these waters. In order to answer this, it is necessary to consider the courts' concept of the function of a pilot. Generally, it has been held that a pilot is presumed to have superior knowledge concerning the effect of tides and currents, channel courses and other features peculiar to the waters in which he is qualified as an expert navigation; and the degree of knowledge exacted, in this regard, is of a very high order. Atlee v. Packet Co. (1874), 88 U.S. 389; The Framlington Court (C.C.A. 1934), 69 F2d 300, cert. den. 292 U.S. 651; Homer Ramsdell Transp. Co. v. Compagnie Generale Transatlantique (C.C., S.D.N.Y., 1894), 63 Fed. 845. Specifically, the Supreme Court said many years ago in the first of the three cases cited above, at pages 396-7, that:

"The harbor pilot is selected for his personal knowledge of the topography through which he steers his vessel. * * * He must know where the navigable channel is. * * * He must also be familiar with all dangers that are permanently located in the course. * * * All this he must know and remember and avoid. * * *

"It may be said that this is exacting a very high order of ability in a pilot. But when we consider the value of the lives and property committed to their control, * * * we do not think we fix the standard too high."

It is obvious that the judgment of Appellant's conduct must be predicated on the assumption that he had a very high degree of knowledge concerning local conditions of navigation. This is so, even without considering Appellant's admissions that he knew about the 19-foot area and the position of Henrietta Rock Buoy with relation to it, because whether a ship's navigator is negligent must be judged by the knowledge he had, or ought to have had, at the time. The Thingvalla (C.C.A. 2, 1891), 48 Fed. 764. according to the standards set by the courts for pilots, Appellant had a duty know about this area of shallow water approaching the dredged channel whether or not it was marked by a buoy. Since Appellant should also have known whether it was pinnacle rock, it is not material whether it was a rock or an ordinary shoal.

In view of the above, it is my opinion that Appellant did not exercise the reasonable care required of a pilot and, therefore, that he was guilty of negligence. He was hired as a pilot because of his knowledge concerning local conditions with which the ship's officers might not be familiar. In addition, the information about the 19-foot area was readily available from the chart in the chartroom aft of the pilothouse. It is no excuse to say that the 19-foot spot on the channel side of the buoy was a trap for a deep draft vessel and that Appellant obeyed the rule to keep the red buoy on his starboard side. This contradicts the requirement that a pilot's actions in navigating a ship in particular water must be guided by his superior knowledge of just such dangers to navigation which are not immediately apparent to a seaman who is not familiar with the waters in which the pilot is an expert navigator.

Furthermore, I think that Appellant's conduct constituted "gross negligence" in the sense that this term was intended by the Examiner. "Gross negligence" has been defined as a greater degree of negligence than ordinary negligence under the same circumstances; the failure to observe even the slightest care in the performance of a duty; but it does not amount to intentional wrong. As indicated in Milwaukee and St. Paul R.R. Co. v. Arms (1875), 91 U.S. 489, the Supreme Court has repeatedly expressed its disapproval of unsuccessful attempts to place negligence in separate categories of "ordinary" and "gross" negligence because whether there is one or the other is a matter of the degree of care required in a particular situation rather than whether a certain amount of care was exercised in any case; since the amount required varies depending upon the degree required. In other words, the amount of care required, in this case, of a seaman who was not a licensed pilot for these waters would be less than that required of Appellant. The Supreme Court stated in the above case:

"'Gross negligence' is a relative term. It is doubtless to be understood as meaning a greater want of care than is implied by the term 'ordinary negligence'; but, after all, it means the absence of the care that was necessary under the circumstances."

It does not appear that the Examiner contemplated willful, intentional conduct by his use of the words "gross negligence." On the contrary, the Examiner stated that Appellant "completely forgot" about this shallow water (this is substantially Appellant's testimony) and that the Examiner considered this to be the "clearest kind of negligence" for a pilot with peculiar knowledge of local dangers. Hence, the Examiner used this term in the sense that he thought Appellant failed to exercise even the slightest care with respect to this known danger.

I agree with this conclusion and there is nothing in the charge of "negligence," to an undescribed degree, which precludes it as a matter of law. Undoubtedly, this forgetfulness constituted a high degree of negligence but it fell short of willful and wanton conduct. There was complete lack of regard for a hazard to a deeply loaded vessel even after Appellant had looked at the well-marked chart just prior to getting under way. In Essex County Electric Co. v. M/S Godafoss (D.C.Mass., 1955), 129 F.Supp. 657, it is implied that the pilot would have been found guilty of "gross negligence" if he had known of the presence of a cable under the water.

In addition to this, the complete lack of care on the part of Appellant is indicated by his failure to take the simple precaution of determining a danger bearing, with respect to this shallow area, when looking at the chart. In a matter of seconds, he could have found that Butler Flats Lighthouse should be bearing not less than 332 degrees true when approaching and passing Henrietta Rock Buoy. The bearing after the ship was aground was 330 3/4. As indicated in the specification, there were several visible aids in the vicinity on which Appellant could have taken cross-bearings to fix the position of his vessel. But this allegation in the specification cannot reasonably be construed to imply that the vessel would be in safe water so long as Henrietta Rock Buoy remained on the starboard side.

For these reasons, it is my opinion that Appellant's lack of care was so great, under the prevailing circumstances, as to justify the order of six months' suspension imposed by the Examiner.

ORDER

The order of the Examiner dated at Boston, Massachusetts, on 1 April 1957, is AFFIRMED.

A. C. Richmond
Vice Admiral United States Coast Guard
Commandant

Dated at Washington, D. C., this 3rd day of December, 1957.